

2009 Puerto Rico Laws Act 57 (S.B. 165)

PUERTO RICO 2009 SESSION LAWS

16TH LEGISLATURE

Additions and deletions are not identified in this document.

Vetoed are indicated by ~~Text~~ ;

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Act No. 57

S.B. No. 165

BILL OF RIGHTS OF PERSONS WITH DISABILITIES

Approved August 5, 2009

An Act

To set forth as public policy the protection of the elderly against financial exploitation by their relatives, nonrelatives or private business; to amend Subsection (e) of Section 3, Subsection (d) of Section 4 of Act No. 238 of August 31, 2004, as amended, known as the “ Bill of Rights of Persons with Disabilities,” to temper the same with the proposed public policy.

Statement of Motives

A woman appropriated the moneys belonging to her elderly parents-in- law, with disabilities, by using a power of attorney granting her the guardianship of the elderly couple. The woman was able to defraud the persons under her care for more than thirteen thousand (13,000) dollars. The law enforcement authorities became aware of the situation when the nursing home where they received daycare reported the poor nutrition and hygiene of the elderly couple. Unfortunately, this real-life example took place in the state of Florida and has become an oftentimes repeated pattern during the past few months. Statistics show that physical and mental abuse of elderly persons and persons with disabilities is ever increasing. According to information gathered by the New York State Office of Children and Family Services, one out of fourteen Americans is a victim of some kind of abuse. Such data also reveals that for each case of **elder abuse** reported, five more cases go unreported. As time moves forward and humankind advances further, new kinds of abuse have emerged which proves, sadly enough, that evil practices keep in stride with human progress.

The most recent form of abuse of the abovementioned populations is financial exploitation. Financial exploitation is defined as: “ the improper use of an adult's funds, property or resources by another individual including, but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coercion, property transfers or denial of access to assets.” (Pub. 4664-S/ Rep. 12706, New York Office of Children and Family Services.)

States such as Indiana, Texas, Illinois, New York, and Florida already have legislation to handle this troubling issue. In Puerto Rico, the situation should be promptly addressed. Florida statute sets forth among the rights of persons determined incapacitated subject to guardianship: 1) To be treated humanely, with dignity and respect; 2) to be protected against abuse, neglect, and exploitation; 3) To receive prudent financial management for his or her property; and 4) to be informed how his or her property is being managed. (Fla. Stat. Ch. 744 XLI II 744.3215 (2007).

This same statute defines the term disabled adult as “a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.” (Fla. Stat. Ch. 825 XLVI 825.101(3) (2007).

The Advocate for the Elderly, Rossana López, recently exposed through the media the fact that her office received three thousand (3,000) abuse complaints in 2005, among which financial exploitation was included. This is an alarming situation considering that according to the U. S. Census Bureau, it is estimated that 17% of the population in Puerto Rico shall be over age 60 by 2010.

In several cases, the exploiter is a family member or an acquaintance. In recent months, this practice has been extended to health professionals, health insurance providers, nursing homes and others in positions of trust such as lawyers or investment brokers. Such scams are carried out by persons who are strangers at first, but who seek to establish an ongoing relationship with elderly persons who are vulnerable or with adults who have disabilities so as to further exploit them.

It should be emphasized that the letter of the law shall have no impact if the Puerto Rican citizenry does not expose suspicious actions and attitudes that might be hiding the malicious intent of all of those who attempt to take advantage of the disability or the elder age of others. All of us should be aware and watch over the elderly and over persons with disabilities, whether relatives or not, so as to prevent them from being financially exploited.

The elderly and the persons with disabilities are more prone to fall prey to financial exploitation if they are:

Abandoned or are not receiving enough care in terms of their needs or financial status.

Isolated from other family members or from any kind of support.

Accompanied by strangers who encourage them to withdraw large sums of money in cash.

Accompanied by a family member or another person who apparently has influence over them to conduct a series of transactions.

Unable to talk for themselves or to make decisions.

Accompanied by an acquaintance who seems to be too interested in their financial status.

Nervous or frightened of the person who accompanies them.

Providing questionable excuses for what they are doing with their money.

Worried or confused as to "missing funds" in their accounts.

Incapable of remembering financial transactions or of having signed documents.

Afraid of being evicted or institutionalized if money is not given to their caregiver.

This deplorable practice must be seriously and promptly addressed by the Government of Puerto Rico, reassuring our commitment to protect those in need. The present legislation is introduced to protect those who at an earlier point in their lives protected us with utmost diligence and care.

Be it enacted by the Legislative Assembly of Puerto Rico:

Section 1. --To set forth the public policy of social justice for the protection of the elderly and persons with disabilities against financial exploitation by their relatives, nonrelatives or private businesses.

Section 2. --Subsection (b) of Section 3 of Act No. 238 of August 31, 2004, as amended [1 L.P.R.A. § 512 nt], is hereby amended to read as follows:

"Section 3. --Public Policy. --

...

(e) The protection of their physical or mental health, and of their property against threats, harassment, coercion or disturbance by any natural or juridical person, including financial exploitation, defined as the improper use of an adult's funds, property or resources by another individual including, but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coercion, property transfers or denial of access to assets.”

Section 3. --Subsection (d) of Section 4 of Act No. 238 of August 31, 2004, as amended [1 L.P.R.A. § 512a], is hereby amended to read as follows:

“(d) To be free from pressure, coercion, and manipulation from relatives, nonrelatives, private businesses or the State, with the intent of exploiting them financially or of impairing their capability and their right to make decisions for themselves.”

Section 4. --This Act shall take effect immediately after its approval.

Approved August 5, 2009.

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